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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,805	06/05/2001	Jeffrey Wheeler	INEX.P-010	5995

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EXAMINER.

EPPS FORD, JANET L

ART UNIT	PAPER NUMBER
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1635

14

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/875,805

Applicant(s)

WHEELER ET AL.

Examiner

Janet L. Epps-Ford, Ph.D.

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

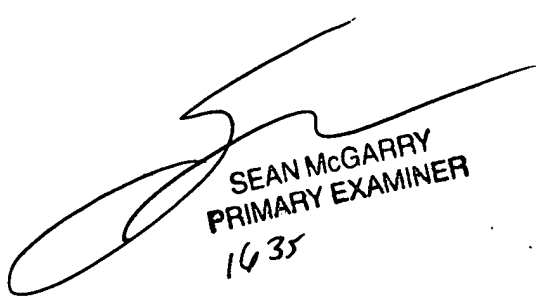
Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicants traverse the rejection of claims 1-14 under 35 USC 102(e) over Choi et al. on the grounds that the rejection of claims 7 and 14 in the Office Action mailed 3-21-03 should not have been made final and that finality should be withdrawn. Contrary to Applicant's assertions, claims 7 and 14 were amended to the extent that claim 1 was amended, since both claim 7 and 14 depend from claim 1.

Additionally, Applicants traverse the rejection of claims 1-14 on the grounds that the Choi et al. reference does not teach a method comprising a step wherein PEG-ceramide is added to pre-existing lipid:nucleic acid complexes. Contrary to Applicant's assertions, according to Choi et al., at col. 4, lines 27-35, PEG-modified ceramide lipids enhance the properties of liposomes by preventing aggregation of liposomes incorporating targeting moieties, including DNA. It is noted that Choi et al. refers to "liposomes incorporating" a targeting moiety, including DNA. This portion of the Choi et al. reference is interpreted as encompassing wherein the PEG-ceramide is used to prevent the aggregation of liposomes presently containing (i.e. "incorporating") DNA. Therefore, Applicant's arguments do not take place of evidence that would suggest that the teachings of Choi et al. do not anticipate the instantly claimed invention.

Moreover, in regards to the gene constructs of Choi et al. reading on Applicant's claimed vectors recited in claims 7 and 14, it is well known in the art that gene constructs are a form of nucleic acid vector.



SEAN McGARRY
PRIMARY EXAMINER
1635